

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA

vs.

SEALED
CASE NO.

JANE SMITH,

Defendant.

_____ /

DEFENDANT'S SENTENCING MEMORANDUM

Jane Smith is a thirty-two year old single mother of three children, Susan who is twelve years old, Kathy who is ten, and Frank who is eight. By all accounts, she has done a good job raising the children. Should this Court sentence Ms. Smith to prison, the placement options within the family are not good. Prior to this case, Ms. Smith had no criminal history. More than two years have passed since her arrest for the offense. Her involvement in the crime had ended months prior to her arrest. She was led into the offense by a man upon whom she had become emotionally and financially dependant.¹ Since her arrest, she has participated in counseling and treatment to address

¹Ms. Smith became involved in the scheme in a way that appears common for many women:

Many women become involved in drug activities as a result of being in a specific relationship; that is, being the girlfriend, wife, or live-in partner of a man involved in drug activity. For many women, the stories of their drug crime center on the fact that they are intimately connected with men involved in drug crime. The woman's drug crime is often in support of her partner's larger drug activities."

Eda Katharine Tinto, *The Role of Gender and Relationships in Reforming the Rockefeller Drug Laws*, 76 N.Y.U.L. Rev. 906, 916-917 (2001). "Many women . . . have limited financial or familial support and therefore do not have the realistic option of leaving the relationship in order to end any involvement in the drug activity." *Id.* at 919.

her emotional and substance abuse problems. She has cooperated with the Government and was prepared to testify as a government witness. Given these circumstances, a non-incarcerative sentence would be “sufficient, but not greater than necessary” to fulfill the congressional established goals of sentencing. 18 U.S.C. § 3553(a).

Ms. Smith and Her Children

Ms. Smith married and became a mother at the age of nineteen. Ex.1, p. 5.² By the time she was twenty-three years old, she and her husband had two additional children. She has raised the three children on her own since she and her husband were divorced in 2002. PSR ¶51. She has done so with little involvement from her ex-husband. Ex. 1, p. 18.

In the assessment conducted by the Countryside Counseling Center, the counselor preparing the assessment recognized the success Ms. Smith has had in raising her children:

Ms. Smith has admitted to making negative choices that she realizes could have a detrimental impact on her and her children’s lives. However, the assessment has found that Jane Smith is a mother who values the opportunity to encourage and nurture her children. Jane Smith presents as a parent whose first priority is the care of her children and it is believed that she feels intense remorse for the negative choices that she has made in the past. Jane has survived traumatic events such as domestic violence and poverty. However, she is determined to persevere and create the best life possible for her three children. Each child is thriving in the environment that Ms. Smith has established and they have the opportunity to reach their highest potential. Ms. Smith has admitted to weaknesses, which include alcoholism and poor insight; however she has also displayed the ability to learn from past mistakes and move past them.

²Exhibit 1 is the “Comprehensive Child and Family Assessment” completed by Countryside Counseling Center, Inc. Countryside Counseling Center is “a community counseling agency” that routinely provides home assessments for Georgia’s Department of Family and Child Services. Ex. 2 (Sept. 23, 2010 letter from B. Wilson to R. Murrell).

Ex. 1, pp. 18-19.³

The Countryside report goes into some detail about each of the three children. Ex. 1, pp. 7-12. All three are doing well in school and have not missed a day or been late to class since school started. Susan, who is in middle school, is in the school band. Kathy, a fifth grader, is in the Girl Scouts, and Frank, who is in special education classes and receives speech therapy, has plans for playing basketball in October. *Id.*, Ex. 6, p. 2.⁴

Ms. Smith's care for her children is at odds with the way she has often conducted her personal life, and she has had to overcome the difficulties she has created for herself and situations in which she has found herself. In the psychological assessment conducted by Georgia psychologist, Lucille Killian, Dr. Killian writes that "Ms. Smith is an alcoholic and she acknowledges this." Ex. 7, p. 6.⁵ Dr. Killian writes that Ms. Smith's "children have told her that 'they pray' that she quits drinking." *Id.* Dr. Killian notes, too, that "Ms. Smith has a history of being in relationships with men who have verbally, emotionally, and physically violent toward her," *Id.* at 3, and concludes that Ms.

³In the letters that have been written on Ms. Smith's behalf, she receives the same recognition. Ms. Smith's sister, Karen Johnson, in describing the time following her sister's divorce, writes "she had a love that was very deep for her children and she wanted to be there for them." Ex. 3, p. 1. Jessica Lindsey, a grandmother who Ms. Smith has come to know, has written that Ms. Smith "is a good mother to her three kids." Ex. 4, p. 2. Ruth Stafford, Ms. Smith's sixty-five-year-old mother, has written "Jane has three young children and ... is a good mother." Ex. 5, p. 1.

⁴Exhibit 6 is a letter addressed to the Court by Adrian Kennedy, who has been providing counseling to Ms. Smith since July of 2009. The exhibit includes Ms. Kennedy's curriculum vitae.

⁵Exhibit 7 includes Dr. Killian's report and her curriculum vitae.

Smith's "clinical symptoms are consistent with Major Depressive Disorder, Recurrent, Moderate Severity." *Id* at 9.

Rehabilitation

Most importantly, though, Ms. Smith has taken steps toward addressing her shortcomings and improving her lot. Since July of 2009, she has received counseling on a regular basis. Ex. 6, p. 1. In November of 2009, she spent four weeks in inpatient alcohol treatment programs. *Id*. She followed that with attendance at Alcohol Anonymous meetings and an intensive twelve-week program. *Id*. at 1-2. She has had a recent relapse, but since then has, at the suggestion of the probation office, begun taking Antabuse.⁶ She says, too, that she intends to seek further treatment.

Ms. Smith has not had a great deal of success in finding employment in thinly-populated North Alabama. Once her case is resolved, she would very much like to move to an area with better employment opportunities. She has some house keeping jobs, though, and took six hours of classes at Youngstown College in the Spring and is currently enrolled there, taking another six hours of classes. Ex. 6, p. 2.

Nature and Circumstances of the Offense

Ms. Smith's role in the offense amounted to assisting Gerald Bush, who organized and led the scheme to distribute marijuana to a variety of locations across the United States. She obtained

⁶The relapse includes Ms. Smith's arrest for getting into a fight with her sister, Karen Johnson. Ms. Johnson has written that "it was basically a sisterly spat blown out of proportion due to high stress levels," with Ms. Smith being "unusually stressed about knowing her court date is approaching, very worried for her children." Ex. 8, p. 1. She goes on to say that "we made amends immediately." *Id*.

a credit card, which she and Mr. Bush used to pay for a shipment of marijuana. PSR ¶15. She assisted, too, in picking up shipments and delivering and receiving payments for the marijuana. Mr. Bush paid her about \$50 a pound for transporting the marijuana. PSR ¶23.⁷

This conduct is not something she would have entered into absent her relationship with Mr. Bush. Karen Johnson explained it this way:

She [Jane] was attracted to his big personality for he was a smooth talker. I think he saw a woman struggling financially, raising three kids on minimum wage and took advantage of the situation and sucked Jane into his ring of life. He was good with her children and that was very helpful to her and won her over quickly. He basically promised Jane to take her from the bottom to the top with lots of money and a new home. This was temptation at a weak moment for Jane. It breaks my heart to say, Jane fell for it.

Ex. 2, p. 1. Dr. Killian provides a more clinical explanation: “Ms. Smith’s personality make-up as well as the clinical depression and alcoholism she was experiencing at the time she met Mr. Bush made her vulnerable to his manipulation.” Ex. 7, p. 8.⁸ It is an unfortunate pattern for Ms. Smith.

⁷In Ms. Smith’s recollection of the chronology, she moved to Arizona in April of 2005. By August, she was living with Mr. Bush and began helping him in the marijuana scheme by late in the fall. By June of 2006, Mr. Bush had become increasingly violent, and their relationship had deteriorated. It was about that time that Mr. Bush moved out of the residence. Ms. Smith remained emotionally tied to and financially dependent on Mr. Bush, and he established a small used car business, Southern Autos, for which Ms. Smith was largely responsible. During this time, Ms. Smith became increasingly reluctant to assist Mr. Bush in the marijuana scheme, and she began playing a lesser role. In July of 2007, with Mr. Bush’s financial assistance, she moved to Alabama to open the used car business there. She participated in the July 2007 pick-up of the water heater in Atlanta, which marked the end of her involvement in the scheme.

⁸Dr. Killian includes a more detailed explanation in her report:

It is clear that, at around the time of her current crime, she was very depressed. At the time, she had left her ex-husband for good and she and her children had relocated to Arizona and were living in a studio apartment,

Dr. Killian writes “Ms. Smith has a history of being easily manipulated by abusive men she is in love with - this is not surprising given her aforementioned personality characteristics.” *Id.* at 8.

Ms. Smith told Dr. Killian “that about two months into the relationship, [Mr. Bush] became physically violent toward her and [that it] continued through out their relationship.” *Id.* at 3. Ms. Smith described it this way in her interview with Dr. Killian:

He, Bush, would hit her “all the time if I didn’t do what he wanted.” He would threaten to hurt her or hit her if she “did not do things his way.” She added that “he was the worst abuse from anyone I’ve been with.” He would “head butt” [her] (leaving a “knot on the head”), kick, punch her on the face, throw objects at her. She stated that towards the end of their relationship, he physically assaulted her approximately once every week or two.

Id. at 4-5. When Dr. Killian asked Ms. Smith why she remained, Ms. Smith said:

“Where was I going to go now? I had nowhere to go, had already given up everything I did have” and added “I was already screwed then. My apartment was already gone and my job was already gone.”

Id. at 4.

The Sentencing Guidelines

Ms. Smith entered into a plea and cooperation agreement with the Government. Ms. Smith’s cooperation consisted of being debriefed by the agents and the Government. She was prepared to testify against both Michelle Gold and Gerald Bush. Oddly enough, the Government agreed to a guilty plea for Mr. Bush to the lesser charge of conspiring to distribute more than 100 kilograms of

struggling financially. She had begun drinking alcohol more regularly then, to cope with her stress and depression.

Ex. 7, p. 6.

marijuana.⁹ For Ms. Smith, who entered a guilty plea more than a year before Mr. Bush, the Government, despite her lesser role, insisted on a plea to the more serious charge of conspiring to distribute 1,000 kilograms or more of marijuana. While the disparity may have been born out of the effort to resolve Mr. Bush's case without a trial, it presents this Court with what is, objectively, a significant inequality.

Ms. Smith is unaware of what if any agreement the Government has with Mr. Bush regarding the drug quantity. In Ms. Smith's case, though, the drug quantity of at least 1,000 kilograms but less than 3,000 kilograms of marijuana produces an offense level of 32. PSR ¶¶29. Ms. Smith qualifies for the safety valve, which results in a two-level reduction, and qualifies for a three-level reduction for acceptance of responsibility. PSR ¶¶ 30, 36. She is left with a total offense level of 27. PSR ¶27. With no criminal history points, her guideline range is 70 to 87 months. PSR ¶78.

As of this date, the Government is considering the possibility of filing a substantial assistance motion. A final decision has not yet been made.¹⁰ Ms. Smith, though, because she does qualify for the safety valve pursuant to USSG § 5G1.1(b), is not facing the mandatory minimum required by 21 U.S.C. § 841(b)(1)(A).

⁹See Doc. 282 in United States v. Gerald Bush, Case No. XXXX.

¹⁰ Should the Government file a substantial assistance motion, a departure may be based only upon the considerations "expressly enumerated in § 5K1.1(a)." United States v. McVay, 447 F.3d 1348 (11th Cir. 2006). "[A]fter it has decided the length of departure warranted by the substantial assistance motion, the district court is then obliged to take into account the advisory Guidelines range and the sentencing factors set forth in 18 U.S.C. § 3553(a) in fashioning a reasonable sentence." *Id.*

Effect of a Prison Sentence

Ms. Smith's greatest fear is the effect a prison sentence will have on her relationship with her children and their welfare. Karen Johnson said it this way:

[Jane] would be so thankful and happy if her greatest fear did not come to pass and that would be missing out on being with her children as they grow and missing out on such a crucial time in their lives. Also the effect it would have on her children as they would be without their mother. Jane wants to hear about their first crushes, wants to be there when her son becomes a star of the football team. She wants to be there when her girls began to blossom into young women and I know her children want their mom there when these important things take place in their lives. No grandmother or aunt can take the place of a mother. I feel it would be traumatizing to her children to be away from their mom for any amount of time being that she is the only stability they have ever known.

Ex. 3, pp. 1-2.

Ms. Smith's concern about her children is especially acute because of the difficulty that will exist in finding someone to care for them. One of the objectives of the Countryside Counseling report was that of determining "possible placement options should Ms. Smith be sentenced to a prison term." Ex. 1, p. 3. The report specifically considered the possibilities of two of Ms. Smith's sisters - Karen Johnson and Linda Stafford, Ms. Smith's mother, Ruth Stafford, and Ronald Smith who is the children's father. Ex. 1, pp. 17-18. Karen Johnson, a single mother with two children of her own, faces "financial and housing restrictions." Linda Stafford has no parenting experience and it is unclear whether she "could provide appropriate shelter for the three children." *Id.* Ruth Stafford has serious health difficulties and placement with her "does not seem sensible at this time due to the limitations that medical issues would inflict." *Id.* Ronald Smith, the children's father, has not maintained an active role in his children's lives, and Ms. Smith firmly believes the children

will not be adequately cared for were they placed in Mr. Smith's custody.¹¹ *Id.* at 17-18. The Countryside report suggests that any of the placement options will have a negative effect on the children:

The identified placements for Karen Johnson, Linda Stafford, and Frank Smith would have challenges providing adequate shelter needs as well as adequate food, clothing, and medical needs. The identified placements would also have difficulty maintaining the current level of social and recreational interaction that the children have acquired. Should the identified children have to be taken from their mother's care and placed with either of the identified placement options, the impact on the identified children will most likely be negative.

Id. at 18.¹²

Patricia M. Wald is a retired judge for the United States Court of Appeals for the District of Columbia. In 1995, when she was still on the bench, she wrote an article that appeared in the Federal Sentencing Reporter. In the article, she acknowledged the saying that the difference between a man going to prison and a woman is that "men lose their freedom: women lose their freedom and

¹¹The September 18, 2002, final judgment regarding the divorce between Ms. Smith and Mr. Smith is attached as Exhibit 9. Within the Exhibit, "Exhibit B" provides that Mr. Smith's visitation with the children "must be supervised by the mother or responsible adult who shall be approved by the mother." While that provision is no longer strictly followed by the parties, it does show that Ms. Smith's concern about her ex-husband's care of the children.

¹²In Georgia, as in most states, there is some risk that parents in prison will lose their parental rights if their children are placed in foster care. *See Note, When Jail Fails: Amending the AFSA to Reduce Its Negative Impact on Children of Incarcerated Parents*, 48 Fam. Ct. Rev. 380 (April, 2010); OCGA § 15-11-58(m) (which like other state statutes drafted in accord with the federal Adoption and Safe Families Act (AFSA), requires, in the case of Georgia, the Georgia Department of Family and Children Services to file a petition for termination of parental rights when the child has been in foster care "for 15 of the most recent 22 months"). *See also*, however, *In Re: J.A.W.*, 636 S.E.2d 725 (Ga. Ct.App.2006).

family.” Patricia M. Wald, “*What about the Kids?*”: *Parenting Issues in Sentencing*, 8 Fed. Sent. 137 (Nov./Dec. 1995).¹³ She went on to explain that the problem was made worse because, given the limited number of federal prisons, women often serve their sentences far from their children:

The problem is compounded because women prisoners, who are a small minority (8%) of the federal prison population, are typically confined in a few institutions remote from their normal residence. Ironically, they receive far fewer visits from their children than do the fathers; over half the women get no child visits at all.

*Id.*¹⁴

While it is impossible to predict exactly how Ms. Smith’s children would be affected by a prison sentence, it seems likely that Frank, who is in special education classes and has had some minor behavior problems, would be the most vulnerable. *See* Ex. 1, p. 12. On balance, it is reasonable to assume the outcome for all three children will be adverse. In a paper presented in 2001

¹³The article which is available on LexisNexis lacks numbered pages.

¹⁴Judge Wald concluded her article by criticizing what was, then, the limited consideration permitted by the Sentencing Commission of the importance of parenting:

The perennial law and order debate that goes on nationally focuses on the rights of society verses the individual offender to justify higher sentences, abolition of parole and even the death penalty. That same concern for society militates towards a sentencing policy that attempts in a small subset of first offender, non-violent parent prisoner cases to consider the welfare of the children. Neither Congress nor the Sentencing Commission has yet come forth with a convincing rationale why parenting should not be a legitimate consideration in the sentencing of low-risk offenders. It is ironic for a society whose leaders talk endlessly of family values to categorically deny the safe harbor of a parent to some of its most needy children.

Id.

to the U.S. Department of Health and Human Services Conference “From Prison to Home,” the authors recognized that the effects vary depending on a variety of variables. The overall picture, though, was not a good one:

School-age children of incarcerated parents exhibit school-related problems and problems with peer relationships. Sack et al. (1976) reported that over 50% of the children of incarcerated parents had school problems, such as poor grades or instances of aggression, albeit many of these problems were temporary. Among the younger children (6-8 years old) in the Sack et al. (1987) study, 16% exhibited transient school phobias and were unwilling to go to school for a 4-6 week period after their parent’s incarceration. In another report, Stanton (1980) found even higher rates of school problems : 70% of 166 children of incarcerated mothers showed poor academic performance and 5% exhibited classroom behavior problems.

Ross D. Parke and Kay Alison Clarke-Stewart, *Effects of Parental Incarceration on Young Children*, from U.S. Department of Health and Human Services Conference “From Prison to Home” (2001).

Available at: <http://aspe.hhs.gov/hsp/prison2home02>. See also John Hagan and Romit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, 26 Crime and Justice 121, 145-146 (1999). In a study from the University of Chicago, two authors concluded there was a significant risk of adverse outcomes for children whose parents went to prison:

We conclude that parental imprisonment is a strong risk factor (and possible cause) for a range of adverse outcomes for children. Including antisocial behavior, offending, mental health problems, drug abuse, school failure, and unemployment. Parental imprisonment might cause these outcomes through several processes: the trauma of a parent-child separation, children being made aware of their parents criminality, family poverty caused by the imprisonment, strained parenting given by remaining care givers, stigma, and stresses involved in maintaining contact with the imprisoned parent.

37 Crime & Just. 133 (2008) at 135. The study goes on to note that a number of factors may cause the children to be “more affected” including the imprisonment of “their mother” rather than their father. *Id.*

18 U.S.C. § 3553

Courts across the country are now well familiar with the sentencing considerations set forth in 18 U.S.C. § 3553(a). The requirement is, of course, that of a case by case analysis, which in some instances means that it is appropriate to defer to the guidelines and inappropriate in others:

The District Court may determine on a case-by-case basis the relative weight to give the guidelines in light of other 3553(a) factors. In some cases it may be appropriate to defer to the guidelines; in others not.

United States v. Lozano, 490 F.3d 1317, 1324 (11th Cir. 2007) (internal punctuation and authority omitted). Specific characteristics of individual defendants, which district courts were once prohibited or discouraged from considering may now be considered. *See* Rita v. United States, 551 U.S. 338, 364-365 (2007) (Stevens, J., concurring) (“Matters such as age, education, mental, or emotional condition, medical condition (including drug or alcohol addiction), employment history, lack of guidance as a youth, family ties, or military, civic, charitable, or public service are not ordinarily considered under the guidelines . . . These are, however, matters that section 3553(a) authorizes a sentencing judge to consider”); United States v. Lazenby 439 F.3d 928, 933 (8th Cir. 2006) (“the other factors cited by the district court, though discouraged or prohibited departure factors under the mandatory guidelines, may be considered in applying the section 3553(a) factors under Booker”).

In Ms. Smith’s case, her family ties and responsibilities say much about her “characteristics,” § 3553(a)(1), and the likelihood that she will commit “further crimes.” § 3553(a)(2)(C). Her lack of any criminal history and her age, similarly, have an effect on that consideration. That she was vulnerable and subject to the manipulation of Gerald Bush says much about the “circumstances of the offense.” 18 U.S.C. § 3553(a)(1). Her willingness to cooperate and provide assistance to the Government, in that it shows acceptance of responsibility for the offense and is evidence of an intent to be on the right side of the law, shows something about her rehabilitation, which affects the possibility of further crimes. Maybe more importantly, her efforts at participating in counseling and addressing her problem with alcohol, and her initial steps toward improving her education level reveals much about her character and a reduced possibility of further criminal activity. Her love for her children and her success in parenting say, most of all, something about her character.

Then, too, apart from the hardship mothers suffer from incarceration and the adverse effect that imprisonment has on the child, a mother’s concern for her child seems to reduce the risk of recidivism:

Even though the [Sentencing] Commission found that the recidivism risk of women in lower criminal history categories does not vary dramatically from that of men, it remains lower. Existing data indicate that women’s lower recidivism rate may be connected to their family and childcare responsibilities. . . . Since many of the offenders with young children also constitute lower recidivism risks in light of their offense of conviction and their prior criminal records, sentencing judges should at least be allowed to consider the impact of a prison sentence on families and minor children.

Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Non-Prison Sentences and Collateral Sanctions*, 58 Stan. L. Rev. 338, 352 (2005).

Ms. Smith's age and the absence of any criminal history also suggest a reduced possibility of recidivism. Studies performed by the United States Sentencing Commission show that those, like Ms. Smith, who are in criminal history category I and are between the ages of 31 to 35 have a reduced risk of recidivism. Those in criminal history category I who are under 21 years of age, for example, have a recidivism rate of 29.5%. United States Sentencing Commission, *Measuring Recidivism: Criminal History Computation of the Federal Sentencing Guidelines*, Exhibit 9 at p. 28 (2004).¹⁵ Those in Ms. Smith's age bracket, though, have a recidivism rate of less than half that amount, 14.6%. *Id.*

Downward departures for family responsibilities were notoriously difficult to obtain when the guidelines were mandatory. Nonetheless, both pre-Booker and subsequent to Booker, courts have acknowledged the wisdom of below-guidelines sentences on the basis of a parent's responsibilities for his or her children. *See, e.g., United States v. White*, 301 F.Supp.2d 289 (S.D.N.Y. 2004) (where a departure was given in a violent bank robbery case, where the defendant was a lookout and solely responsible for her children as well as her fourteen year old sister); United States v. Crawford, 2007 WL 2436764 (E.D. Wis. 2007)(where a defendant received a below-guidelines sentence because she had been coerced into participating in the crack cocaine conspiracy and she was the "sole parental care-giver of five children"); United States v. Davis, 2008 WL 2329290 (S.D.N.Y. 2008)(where a defendant charged with possession of a sawed-off shotgun who,

¹⁵The report is available at www.USSC.gov/research.htm.

although married, was the primary care taker of his children, received a below-guidelines sentence because “any term of imprisonment would be disastrous to [his] family”).

Courts, too, have recognized that rehabilitation is a reason that justifies a below-guidelines sentence. *See, e.g., Gall v. United States*, 552 U.S. 38, 43-44 (2007); *United States v. Johnson*, 2007 WL 3357564, *4 (E.D. Wis. 2007)(where the court imposed a below-guidelines sentence because the court “did not see [the] defendant as presenting a danger to the public or a risk of re-offending, given his minimal record and efforts at cooperating and changing his life.”); *United States v. Hawkins*, 380 F.Supp.2d 143, 161 (E.D.N.Y. 2005)(where the court imposed a below-guidelines sentence and noted that “since Booker, the guidelines are no longer a straight-jacket binding courts to artificially created and cruel paradoxes of sentencing, by insisting not only on rehabilitation, but on ‘extra ordinary’ rehabilitation”).

Among the others factors listed in § 3553(a), the one most often argued by the Government is the need to avoid unwarranted sentencing disparities. The concern, though, is with those disparities that are *unwarranted*. *United States v. Owens*, 464 F.3d 1252, 1256 (11th Cir. 2006); *See also* 18 U.S.C. § 3553(a)(6)(“ . . .the need to avoid *unwarranted* sentence disparities...”)(emphasis added); *United States v. Duncan*, 479 F.3d 924, 929 (7th Cir. 2007) (“18 U.S.C. § 3553(a)(6) does not instruct district courts to avoid all differences in sentencing, only unwarranted disparities.”). To impose the same sort of sentence on Ms Smith as those whose involvement was driven solely by profit, who lack the family responsibilities of Ms. Smith, who have not made sincere efforts to

rehabilitate themselves, and who run a significant risk of recidivism is a false equality that ignores the facts.

Conclusion

Even when the Sentencing Guidelines were mandatory, sentencing courts were to treat those before them as individuals. *See Koon v. United States*, 518 U.S. 81, 113 (1996) (“It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”). Decisions in Booker, Rita, Kimbrough, and Gall and the command of the statute to impose a sentence that is “sufficient, but not greater than necessary,” have given sentencing courts greater latitude to impose a sentence that fits the crime and the person before the court. Ms. Smith respectfully requests this Court to exercise that discretion and to impose a sentence that does not require time spent in prison and that allows her to continue to be a mother to her three children.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically furnished to Frank Williams, Assistant United States Attorney, 300 E. University Avenue, Third Floor, Gainesville, Florida, 32601, on October 18, 2010.

Respectfully submitted,

RANDOLPH P. MURRELL
Federal Public Defender
Fla. Bar No. 220256
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
(850) 942-8818

Fictional names have been substituted for the real names for privacy considerations.